

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

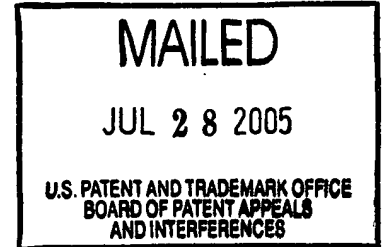
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CRAIG L. REDING
and SUZI LEVAS

Appeal No. 2005-1456
Application No. 09/596,466

ON BRIEF



Before JERRY SMITH, RUGGIERO, and DIXON, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-22, which constitute all the claims in the application.

The disclosed invention pertains to a method of providing customer service to a user of the Internet.

Representative claim 1 is reproduced as follows:

1. A method of providing customer service to a user of the Internet, the method comprising the steps of:
receiving a message, originating from a computer located at a user premise, over the Internet representing a request for a call from a customer service representative, said message including a telephone number corresponding to said user and a telephone number corresponding to at least one customer service representative; and

operating, in response to said received message, calling equipment to establish a call between said user and a customer service representative.

The examiner relies on the following references:

Bateman et al. (Bateman)	5,884,032	Mar. 16, 1999
Smith et al. (Smith)	6,141,412	Oct. 31, 2000 (filed Apr. 19, 1996)

Claims 1-22 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness the examiner offers Bateman in view of Smith.

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-22. Accordingly, we affirm.

Appellants have indicated that for purposes of this appeal the claims will stand or fall together in the following two groups: Group I has claims 1, 2, 4, 5 and 8-22, and Group II has claims 3, 6 and 7. Consistent with this indication appellants have made no separate arguments with respect to any of the claims within each group. Accordingly, all the claims within each group will stand or fall together. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Therefore, we will consider the rejection against claims 1 and 3 as representative of all the claims on appeal.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth

in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ

685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)(2004)].

With respect to representative claim 1, the examiner essentially finds that Bateman teaches the claimed invention except that Bateman does not teach including the telephone number corresponding to at least one customer service representative in the help request message. The examiner cites Smith as teaching that it was known in the art that customers might want to talk to a specific agent. The examiner finds that it would have been obvious to the artisan to have included a specific agent's telephone number in the help request message of Bateman so that the customer could talk to a specific agent. The examiner also cites additional embodiments of Bateman which allegedly teach that the call request message must inherently include both the customer's telephone number and the agent's telephone number [answer, pages 4-8].

Appellants argue that Bateman fails to teach a call initiation message from a customer's computer that includes both a customer telephone number and a telephone number corresponding to at least one customer service representative. With respect to Smith, appellants argue that Smith fails to teach using a telephone number to identify a preferred agent. Appellants also note that Smith does not mention E-mail, the Internet or messages including the telephone number of a preferred agent. Appellants also argue that the examiner failed to provide any indication of how to modify Bateman to arrive at the claimed invention [brief, pages 7-13].

The examiner responds that Smith provides the motivation for including an agent's telephone number in the help request message of Bateman. The examiner also notes that in any call request control message, information including the calling and called numbers must be present. The examiner also notes that if an agent has a telephone, then he also has a telephone number [answer, pages 9-14].

Appellants respond that Smith fails to teach using a telephone number to identify the preferred agent that the customer wishes to talk to. Appellants also argue that Bateman

would not have the capability of using such information if it was provided. Appellants argue that the second embodiment of Bateman cited by the examiner does not satisfy the claimed invention [reply brief, pages 5-11].

We will sustain the examiner's rejection of representative claim 1 and of the other claims grouped therewith. Although the examiner refers to several embodiments in Bateman, we refer to the first embodiment for its teachings. Specifically, the first embodiment in Bateman allows the customer to choose a "Live Help" option in which a form pops up for the customer to fill in his phone number. The request for help is sent by E-mail or TCP/IP protocol for handling by a call center. The call center arranges for the customer to be called by a servicing agent [column 6, lines 1-60]. As noted by the examiner, Bateman does not teach sending the telephone number of the servicing agent as part of the E-mail or TCP/IP message. The examiner cites Smith as teaching that a customer may want to speak to a specific servicing agent. Since repeat customers of a company who have received useful help in the past may desire to speak to the same agent who helped them before, we agree with the examiner that the artisan would have been motivated to modify Bateman so that the customer could request the "Live Help" from a particular agent.

Although Smith does not specifically teach that the form of the identification should be the agent's telephone number, we agree with the examiner that a telephone number would be known to the artisan as one conventional way of distinguishing one servicing agent from another. Each of the conventional ways of making such an identification would have been obvious to the artisan. In order to request a specific agent as taught by Smith, we agree with the examiner that the form which is filled out by the customer in Bateman would have to be modified to allow the customer to include the specific agent information. Upon entering the agent telephone number information in Bateman as taught by Smith, we agree with the examiner that the invention of claim 1 results.

Appellants' various arguments in the briefs fail to persuade us that the rejection is in error. The argument that neither reference teaches the claimed message including both the customer's telephone number and the agent's telephone number is not persuasive because the rejection is not based on anticipation. Although Smith does not mention identifying specific agents using telephone numbers, as noted above, the use of telephone numbers would have been obvious to the artisan.

Appellants argue that the examiner has failed to indicate how Bateman would be modified, but as discussed above, we agree with the examiner that the first embodiment of Bateman would have been modified to permit the customer to enter the telephone number of a specific agent as taught by Smith so that a customer could receive help from an agent known to be helpful to the customer. We are of the view that the examiner has at least established a prima facie case of obviousness and none of appellants' arguments persuade us that the rejection is in error.

We now consider the rejection with respect to separately argued claim 3. The examiner points to the third embodiment of Bateman in which a telephone number of an agent is located on a web page and is sent to another application to set up the call between the customer and the agent. The examiner finds that it would have been obvious to the artisan to allow a customer in Bateman to obtain the telephone number of at least one agent from the web page [answer, pages 8-9].

Appellants argue that even assuming the combination of Bateman and Smith, there is no reference to using an agent's telephone number in a message or the teaching of receiving such a number via a Web page [brief, pages 13-14]. Appellants also

respond that the third embodiment of Bateman does not suggest the modification proposed by the examiner. Appellants also assert that there is no cited art which supports the examiner's position that agent numbers can be searched on a website [reply brief, pages 11-14].

We will sustain the examiner's rejection of representative claim 3 and of claims 6 and 7 which are grouped therewith. We determined above that it would have been obvious to the artisan to modify Bateman in such a manner that a customer could send a message which includes an agent's telephone number so that the customer could speak to a specific agent as taught by Smith. In order for the customer to send the telephone number of a specific agent, the customer must have access to such information. We agree with the examiner that it would have been obvious to the artisan for the company to provide this information to the customer from the website via a Web page. Although this may not be the only way in which such information can be conveyed to the customer, it is clearly a conventional way in which information is communicated over the Internet from a company to a customer.

In summary, we have sustained the examiner's rejection of all the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-22 is affirmed.

AFFIRMED

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